



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Release Number: **201323028**  
Release Date: 6/72013  
Date: March 14, 2013

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.32-00; 501.32-01; 501.33-00

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038(CG) (11-2005)  
Catalog Number 47632S

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Holly O. Paz  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: January 25, 2013

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**LEGEND:**

B = Date  
C = State  
D = Address  
L = Website address  
M = Website address  
N = Website address  
O = Website address  
P = Organization  
Q = Organization

w = dollar amount  
x = dollar amount  
y = dollar amount  
z = dollar amount

**UIL:**

501.32-00  
501.32-01  
501.33-00

Dear :

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

**Issue**

- Do you meet the operational test under section 501(c)(3) of the Code? No, for the reasons described below.

**Facts**

You were incorporated on B under C law. Your Articles of Incorporation ("Articles") state that your specific purpose is to "act and operate as a charitable organization in lessening the burdens of government, providing relief of the poor and distressed or under-privileged, and promoting social welfare by performing free credit counseling for two primary charitable organizations: P and Q."

Your Bylaws state that your specific objectives are "(f)ree credit counseling services for two major charitable organizations, P and Q."

Neither P, nor Q were mentioned in your activity description, application, correspondence, or any other place throughout the processing of your application. The details you provided made it clear your activities are open to the public.

Your original application listed three governing body members. During the processing of your application, all three of these members were replaced by three new members. None of your governing body members receive compensation.

Your initial activity description submitted with your application indicated you would provide free consumer counseling services and answer queries presented by callers. You stated your aim was to create a platform in order to help the public make smarter financial decisions. You would do this through debt consolidation, credit counseling, and by providing a thorough education of financial concepts to callers. Although you stated your services would be free, you contradicted this statement by saying your revenue would come from "credit consultations" and donations. Your financial projections showed w dollars annually coming from credit consultations. You stated that your program will be advertised through word of mouth, personal contacts and your website O.

Your application stated that you had two websites, O and N. However, N was still under construction. N later became functional and is actually M. O advertises credit repair services for x dollars and lists a phone number to call. Individuals can call the number listed on O and receive a credit consultation. Consultants will review the individual's credit reports and offer a solution that will attack erroneous items on an individual's credit report. O states "Get started today for only [x dollars]." Presumably, this is the source of the w dollars annually listed in your original financial projections. Upon questioning, you stated that O "was not to be used by [you]" and that the questions were not applicable because O is "already closed." However, O is not "closed" and remains an active website conducting the same business.

Upon further questioning, you stated that O is not your website. You have now created another website L, which is a do-it-yourself website where individuals can repair their own credit. For a fee of y dollars per month, individuals can access your website L and get template letters that can be used to fix their credit.

You will not offer a sliding scale for low-income clients who use L. However, you will offer to waive the y dollars per month if "financial hardship is proven." You offered no further details regarding how such hardship is proven.

You provided a draft copy of the material that will be offered on L. It states that L "is the solution for those who need assistance disputing their credit reports, without the obligation or high costs that normally come from credit restoration services." The site will walk the client through the steps to repair their credit on their own.

You also made other substantial changes throughout the processing of your application. You decided not to offer debt consolidation. Your activities will include the credit repair site, credit education, credit advice, budget education and explaining how to manage money and recommending debt consolidation or debt management. You will only make recommendations. It is against your mission to refer clients to any outside party.

Your free workshops will include topics such as the basics of credit, controlling plastic money, making credit work for you and the importance of having a budget.

You do not have a facility of your own. You stated you will operate in space "donated" by an unrelated for-profit entity. However, your financial projections indicate z dollars annually in rent and utilities.

You receive most of your revenue from fees and your expenses include salaries, promotion expenses, office supplies, telephone/fax, internet, and other typical operating expenses for a business.

You will not limit your services to low-income individuals. Although your focus is on low-income individuals, your services are open to the general public.

## **Law**

Section 501(c)(3) of the Code provides that corporations may be exempted from tax if they are organized and operated exclusively for charitable or educational purposes and no part of their net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("regulations") provides that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the

purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court relied on the "commerciality" doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax exempt purpose. As the court stated:

Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, inter alia, whether the organization uses commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test under section 501(c)(3) of the Code because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In Bethel Conservative Mennonite Church v. Commissioner, 746 F. 2d 388, 391 (7<sup>th</sup> Cir. 1984) the court considered how a medical plan conducted by a church affected its exempt status. In analyzing the facts of the case the court stated that "The facts in each case must be explored to ascertain the predominant or primary purpose for which the organization was formed, and also the manner of its operation."

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if

substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (1991), the Court of Appeals upheld a Tax Court decision that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church did not qualify for exemption under section 501(c)(3) of the Code because the organization was operated for a substantial nonexempt commercial purpose. The court found that the organization's activities were "presumptively commercial" because the organization was in competition with other restaurants, engaged in marketing, and generally operated in a manner similar to commercial businesses.

### **Application of Tax Law**

Section 501(c)(3) of the Code sets forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3). Section 1.501(c)(3)-1(a)(1) of the regulations. Based on the information you provided in your application and supporting documentation, we conclude that you fail the operational test.

To satisfy the 501(c)(3) operational test, an organization must establish that it is operated exclusively for one or more exempt purposes. Section 1.501(c)(3)-1(c)(1) of the regulations. You are not operated exclusively for one or more exempt purposes because more than an insubstantial amount of your time and resources are devoted to a fee based credit repair service. While you will focus on low-income clients, anyone can access your website. Offering credit repair services online to the general public for a fee does not further charitable purposes.

As stated, more than an insubstantial amount of your time and resources are devoted to providing a service to the general public for a fee. Participants merely pay a fee to use your template letters to fix their credit on their own. The courts have consistently held that an organization's purposes may be inferred from its manner of operations. Bethel Conservative Mennonite Church, *supra*. A substantial portion of your operations are commercial in nature.

Although an organization is not disqualified from tax-exempt status solely because its primary activity constitutes a business, when it conducts a business with an apparently commercial character as its primary activity, "that fact weighs heavily against exemption." B.S.W. Group, *supra*.

It is significant that you are in direct competition with for-profit entities. "Competition with commercial firms is strong evidence of the predominance of non-exempt commercial purposes." B.S.W. Group, *supra*.

A nonexempt purpose may be evidenced by activities that are conducted in a commercial manner or for a commercial purpose. Indeed, in discerning whether an

organization has a substantial nonexempt commercial purpose, courts focus on a number of factors related to the nature of the activities and how an organization conducts its business, including pricing policies, funding sources, and the organization's competitiveness with and similarity to other commercial ventures. See e.g., Arlie Foundation, *supra*, B.S.W. Group, *supra*; Living Faith, *supra*. An examination of your activities, pricing policies, funding sources and competition with for-profit entities clearly indicate a substantial commercial purpose.

Even though your workshops and other credit education activities may further an exempt purpose, similar to Better Business Bureau of Washington, D.C., Inc. *supra*, your substantial non-exempt activity of conducting a do-it-yourself credit repair website for a monthly fee, precludes exemption. As in the court case, the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

### **Conclusion**

Based on the facts and information provided, you are not operated exclusively for exempt purposes. You do not pass the operational test because you have a substantial non-exempt purpose. Therefore, you are not described in section 501(c)(3).

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you are not deductible under section 170.

### **Appeal Rights**

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892. These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and



6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

**Mail to:**

Internal Revenue Service  
EO Determinations Quality Assurance  
Room 7-008  
P.O. Box 2508  
Cincinnati, OH 45201

**Deliver to:**

Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Room 7-008  
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Holly Paz  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure, Publication 892